

# The New Washington XL Act — A Common Sense Approach To Environmental Regulation

by Donald B. Myers

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In its most recent session, the Washington legislature authorized an entirely new approach to environmental regulation. Engrossed Second Substitute House Bill 1866 authorizes state, regional and local agencies administering environmental regulatory programs to enter into "Environmental Excellence Program Agreements" (EEPAs) that set facility-specific regulatory requirements. The terms of an EEPA supersede and replace otherwise applicable requirements under Washington's environmental laws—including statutes, regulations, guidance and permit requirements.

This act provides agencies and the regulated community with the opportunity to use common sense, ingenuity and good management to craft environmental regulatory programs that will achieve the State's environmental goals better, faster and less expensively than otherwise possible. And it provides regulated facilities with a meaningful incentive to be better environmental managers. In his message to the legislature on the bill, Governor Locke emphasized his commitment to improving government service, and his belief that the bill would help to achieve it:

"One element of better performance is a willingness to be innovative and creative in the pursuit of objectives. Engrossed Second Substitute House Bill 1866 reflects just such an approach. It promotes a more efficient and results-oriented regulatory system for state, local and regional agencies that administer a host of environmental and resource protection laws."

The Act is based on Project XL (Excellence and Leadership), a federal initiative from EPA. It is, in effect, a Washington XL Act. EPA has authorized Project XL agreements in Georgia, Florida and Arizona. The federal XL program has had limited effect, in part because it has not had a clear legislative basis. Washington joins only Illinois, Minnesota and New Hampshire in adopting this innovative legislation.

## Who Can Participate

Entering into an EEPA is entirely voluntary. Any facility owner or operator may propose an EEPA. However, no one is obligated to accept the alternative regulation available under an EEPA.

An agency may enter into an EEPA with any facility regulated under the environmental laws of the State. "Environmental laws" is defined broadly, including laws regulating air and water pollution, solid and hazardous waste, and shorelines management. The Model Toxics Control Act is excluded, leaving the cleanup of hazardous waste sites unaffected.

An EEPA is available only if it will achieve more effective or efficient environmental results. To be "more effective" performance under the EEPA must be better overall than would be achieved under the legal requirements that are superseded or replaced by the EEPA. To be "more efficient" the equivalent results are achieved at a reduced cost.

The participation of stakeholders—community organizations, nearby residents, employees, local governments, environmental organizations, etc.—is vital to the development of an EEPA. It is considered necessary to an informed agency decision, and is essential public acceptance. An EEPA proposal must include a plan for stakeholder involvement.

An EEPA can cover programs administered by more than one agency. For example, it may establish requirements for a shoreline project, air emissions and discharges to surface waters, administered respectively by a county, a regional air authority and by Ecology. In those cases, each agency signs the EEPA.

An EEPA also can cover more than one facility, under a programmatic EEPA. Programmatic EEPAs could include a business with more than one stationary or mobile facility. A programmatic approach may make the opportunities of the EEPA more available to small businesses, spreading the costs of development.

## How EEPAs Can Work

Apart from providing broad tools to Ecology and other state agencies, what does the EEPA program really do? The best way to understand the possibilities of the EEPA program is to consider some of the projects that have progressed through the federal XL Program.

The first approved XL agreement was for an Intel semiconductor manufacturing plant. It replaced limitations on air emissions from individual sources within the plant with a plant-wide cap. It also went beyond regulatory programs by establishing a process for setting emissions limitations on air pollutants not currently regulated, and establishing programs for reducing water consumption and the generation of solid, nonhazardous chemicals and hazardous waste. In exchange, Intel is relieved from the time-consuming permitting procedures required to create or modify many of the emissions sources within the plant. This permits Intel to rapidly change its product manufacturing in response to market conditions.

At its Flint River plant, Weyerhaeuser agreed to adopt a variety of pollution reduction programs that go beyond currently applicable regulatory requirements. These include reduced waste water discharges, water consumption and solid waste generation, and an enhanced environmental management program. In exchange, Weyerhaeuser will have flexibility to consolidate its regular reporting, the opportunity to use alternative means to

meet some new air emission requirements, and a waiver of certain review requirements for plant modifications that do not exceed agreed emission levels.

At the Jack M. Berry, Inc. facility in south Florida, the XL agreement will permit the consolidation of 25 operating and regulatory permits into a "Comprehensive Operating Permit." Berry will adopt an environmental management program. Berry expects to realize significant cost savings by reducing paperwork and administration in permit processing and reporting.

The opportunities for EEPAs are not limited to businesses. Regulated governmental agencies also may take advantage of the Act. Programs sponsored under the federal Community XL program suggest a range of additional possibilities.

Baltimore proposed an XL program to facilitate the development of an industrial park as part of an empowerment zone initiative, designed for revitalization of areas of Baltimore's commercial and residential districts. The proposal is expected to reduce the collective permitting burden on businesses locating in the industrial park. Clairmont County, Ohio proposed an innovative watershed management program that would create an effluent trading system in which pollution credits could be exchanged among point and non-point sources.

The San Diego Unified Port District proposed a centralized environmental reporting system and integrated and coordinated a set of pollution control programs for a group of its tenants. A coordinated management would reduce costs and administrative burdens on the tenants, making the Port a more attractive site for tenant operations.

The new Washington XL Act affords Washington business a significant opportunity to improve the performance and cost effectiveness of their environmental management. It allows them to excel with a natural resource—innovation. ■

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*Donald B. Myers is a partner in the Environmental Group of the law firm Stoen Rives LLP. He was one of the primary drafters of House Bill 1866.*

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